

FILED
MISSOULA, MT
2007 APR 4 AM 9 05
PATRICK E. DUFFY
BY _____
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

BRIAN JAMES AZURE,)	CV 06-111-M-DWM
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
DAVID SONJU,)	
)	
Defendant.)	
_____)	

United States Magistrate Jeremiah C. Lynch entered Findings and Recommendation in this matter on February 27, 2007. Azure filed objections and is therefore entitled to de novo review of the record. 28 U.S.C. § 636(b)(1). The parties are familiar with the factual and procedural history so they will be recited only as necessary.

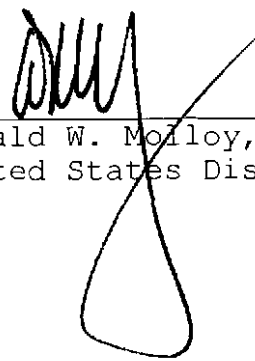
Judge Lynch concluded that Azure's complaint should be dismissed without prejudice and I agree. The complaint is dismissed because in accordance with the requisite preliminary screening, Azure's claim fail to meet the threshold set forth in 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c)(1); and

Lopez v. Smith, 203 F.3d 1122, 1126 (9th Cir. 2000) (en banc). Azure's action against his probation officer is not cognizable. Nor can the complaint be cured via amendment in accordance with *Lopez*. Nonetheless, *Heck v. Humphrey*, 512 U.S. 477 (1994) applies because it is conceivable that Azure could renew this claim against his probation officer if his conviction for failure to register under Montana Code Annotated § 46-23-507 were set aside.

The Court notes that Azure objects but he has not set forth a compelling legal reason to deviate from Judge Lynch's recommendations.

Accordingly, based upon the foregoing I adopt Judge Lynch's Findings and Recommendation (dkt #9) in full: Plaintiff's complaint (dkt #1) is DISMISSED WITHOUT PREJUDICE.

DATED this 4th day of April, 2007.



Donald W. Molloy, Chief Judge
United States District Court